national defense or to protect property or human life.

SEC. 3127. FUNDS AVAILABLE FOR ALL NATIONAL SECURITY PROGRAMS OF THE DEPARTMENT OF ENERGY

Subject to the provisions of appropriation Acts and section 3121, amounts appropriated pursuant to this title for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.

SEC. 3128. AVAILABILITY OF FUNDS

When so specified in an appropriation Act, amounts appropriated for operating expenses or for plant and capital equipment may remain available until expended.

PART C--TECHNOLOGY TRANSFER

SEC. 3131. SHORT TITLE

This part may be cited as the ``National Competitiveness Technology Transfer Act of 1989''.

SEC. 3132. FINDINGS AND PURPOSES

(a) FINDINGS.--Congress finds that--

(1) technology advancement is a key component in the growth of the United States industrial economy, and a strong industrial base is an essential element of the security of this country;

(2) there is a need to enhance United States competitiveness in both domestic and international

markets;

(3) innovation and the rapid application of commercially valuable technology are assuming a more significant role in near-term marketplace success;

(4) the Federal laboratories and other facilities have outstanding capabilities in a variety of advanced technologies and skilled scientists, engineers, and technicians who could contribute substantially to the posture of United States industry in international competition;

(5) improved opportunities for cooperative research and development agreements between contractor-managers of certain Federal laboratories and the private sector in the United States, consistent with the program missions at those facilities, particularly the national security functions involved in atomic energy defense activities, would contribute to our national well-being; and

(6) more effective cooperation between those laboratories and the private sector in the United States is required to provide speed and certainty in the technology transfer process.

(b) PURPOSES.--The purposes of this part are to--

(1) enhance United States national security by promoting technology transfer between Government-owned, contractor-operated laboratories and the private sector

in the United States; and

(2) enhance collaboration between universities, the private sector, and Government-owned, contractor-operated laboratories in order to foster the development of technologies in areas of significant economic potential.

SEC. 3133. AUTHORITY TO ENTER INTO COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS

(a) TECHNOLOGY TRANSFER ACTIVITIES.--Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) is amended--

(1) in subsection (a)--

(A) by inserting ``, and, to the extent provided in an agency-approved joint work statement, the director of any of its Government-owned, contractor-operated laboratories'' after ``Government-operated Federal laboratories'';

(B) by striking ``for Government-owned'' and inserting in lieu thereof ``(in the case of a Government-owned, contractor-operated laboratory, subject to subsection (c) of this section) for'' in paragraph (2); and

(C) by striking ``of Federal employees'' in paragraph (2);

(2) in subsection (b)--

(A) by inserting ``, and, to the extent provided

in an agency-approved joint work statement, a Government-owned, contractor-operated laboratory,'' after ``Government-operated Federal laboratory'';

(B) by striking ``a Federal'' in paragraph (2) and inserting in lieu thereof ``a laboratory''; and

(C) by inserting after paragraph (5) the following:

``A Government-owned, contractor-operated laboratory that enters into a cooperative research and development agreement under subsection (a)(1) may use or obligate royalties or other income accruing to such laboratory under such agreement with respect to any invention only (i) for payments to inventors; (ii) for the purposes described in section 14(a)(1)(B)(i), (ii), and (iv); and (iii) for scientific research and development consistent with the research and development mission and objectives of the laboratory.'';

(3) in subsection (c)(3)(A), by striking ``employee standards of conduct'' and inserting in lieu thereof ``standards of conduct for its employees'';

(4) in subsection (c)(5)(A), by inserting ``presented by the director of a Government-operated laboratory'' after ``any such agreement'';

(5) in subsection (c)(5)(B), by inserting ``by the director of a Government-operated laboratory'' after ``an agreement presented'';

(6) in subsection (c)(5), by adding at the end the following new subparagraph:

``(C)(i) Any agency which has contracted with a non-Federal entity to operate a laboratory shall review and approve, request specific modifications to, or disapprove a joint work statement that is submitted by the director of such laboratory within 90 days after such submission. In any case where an agency has requested specific modifications to a joint work statement, the agency shall approve or disapprove any resubmission of such joint work statement within 30 days after such resubmission, or 90 days after the original submission, whichever occurs later. No agreement may be entered into by a Government-owned, contractor-operated laboratory under this section before both approval of the agreement under clause (iv) and approval under this clause of a joint work statement.

``(ii) In any case in which an agency which has contracted with a non-Federal entity to operate a laboratory disapproves or requests the modification of a joint work statement submitted under this section, the agency shall promptly transmit a written explanation of such disapproval or modification to the director of the laboratory concerned.

``(iii) Any agency which has contracted with a non-Federal entity to operate a laboratory or laboratories shall develop and provide to such laboratory or laboratories one or

more model cooperative research and development agreements, for the purposes of standardizing practices and procedures, resolving common legal issues, and enabling review of cooperative research and development agreements to be carried out in a routine and prompt manner.

``(iv) An agency which has contracted with a non-Federal entity to operate a laboratory shall review each agreement under this section. Within 30 days after the presentation, by the director of the laboratory, of such agreement, the agency shall, on the basis of such review, approve or request specific modification to such agreement. Such agreement shall not take effect before approval under this clause.

``(v) If an agency fails to complete a review under clause (iv) within the 30-day period specified therein, the agency shall submit to the Congress, within 10 days after the end of that 30-day period, a report on the reasons for such failure. The agency shall, at the end of each successive 30-day period thereafter during which such failure continues, submit to the Congress another report on the reasons for the continuing failure. Nothing in this clause relieves the agency of the requirement to complete a review under clause (iv).

``(vi) In any case in which an agency which has contracted with a non-Federal entity to operate a laboratory requests the modification of an agreement presented under

this section, the agency shall promptly transmit a written explanation of such modification to the director of the laboratory concerned.'';

(7) in subsection (c), by adding at the end the following new paragraph:

``(7)(A) No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, United States Code, which is obtained in the conduct of research or as a result of activities under this Act from a non-Federal party participating in a cooperative research and development agreement shall be disclosed.

``(B) The director, or in the case of a contractor-operated laboratory, the agency, for a period of up to 5 years after development of information that results from research and development activities conducted under this Act and that would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a non-Federal party participating in a cooperative research and development agreement, may provide appropriate protections against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5, United States Code.''; and

(8) in subsection (d)--

(A) by striking ``and'' at the end of paragraph (1);

(B) by amending paragraph (2) to read as follows:

``(2) the term `laboratory' means--

``(A) a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government;

``(B) a group of Government-owned, contractor-operated facilities under a common contract, when a substantial purpose of the contract is the performance of research and development for the Federal Government; and

``(C) a Government-owned, contractor-operated facility that is not under a common contract described in subparagraph (B), and the primary purpose of which is the performance of research and development for the Federal Government,

but such term does not include any facility covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program; and''; and

(C) by adding at the end the following new paragraph:

``(3) the term `joint work statement' means a proposal prepared for a Federal agency by the director of a Government-owned, contractor-operated laboratory describing the purpose and scope of a proposed cooperative research and development agreement, and assigning rights and responsibilities among the agency, the laboratory, and any other party or parties to the proposed agreement.''.

(b) PRINCIPLES.--Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) is amended by adding at the end the following new subsection:

``(g) PRINCIPLES.--In implementing this section, each agency which has contracted with a non-Federal entity to operate a laboratory shall be guided by the following principles:

``(1) The implementation shall advance program missions at the laboratory, including any national security mission.

``(2) Classified information and unclassified sensitive information protected by law, regulation, or Executive order shall be appropriately safeguarded.''.

(c) TECHNICAL AMENDMENTS.--Section 14 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c) is amended--

(1) in subsection (a)(1), by inserting ``by

Government-operated Federal laboratories'' after ``entered into''; and by striking ``11'' and inserting in lieu thereof ``12'';

(2) in subsection (a)(1)(B)(ii), by inserting ``, including ~~to make~~ making payments to inventors and developers of sensitive or classified technology, regardless of whether the technology has commercial applications'' after ``that laboratory''; and

(3) in subsection (a)(1)(B)(iv), by striking ``Government-operated''.

(d) CONTRACT PROVISIONS.--(1) Not later than 150 days after the date of enactment of this Act, each agency which has contracted with a non-Federal entity to operate a Government-owned laboratory shall propose for inclusion in that laboratory's operating contract, to the extent not already included, appropriate contract provisions that--

(A) establish technology transfer, including cooperative research and development agreements, as a mission for the laboratory under section 11(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980;

(B) describe the respective obligations and responsibilities of the agency and the laboratory with respect to this part and section 12 of the Stevenson-Wydler Technology Innovation Act of 1980;

(C) require that, except as provided in paragraph

(2), no employee of the laboratory shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a cooperative research and development agreement if, to such employee's knowledge--

(i) such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the laboratory) in which such employee serves as an officer, director, trustee, partner, or employee--

(I) holds a financial interest in any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement; or

(II) receives a gift or gratuity from any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement; or

(ii) a financial interest in any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement, is held by any person or organization with whom such

employee is negotiating or has any arrangement concerning prospective employment;

(D) require that each employee of the laboratory who negotiates or approves a cooperative research and development agreement shall certify to the agency that the circumstances described in subparagraph (C)(i) and (ii) do not apply to such employee;

(E) require the laboratory to widely disseminate information on opportunities to participate with the laboratory in technology transfer, including cooperative research and development agreements; and

(F) provides for an accounting of all royalty or other income received under cooperative research and development agreements.

(2) The requirements described in paragraph (1)(C) and (D) shall not apply in a case where the negotiating or approving employee advises the agency that reviewed the applicable joint work statement under section 12(c)(5)(C)(i) of the Stevenson-Wydler Technology Innovation Act of 1980 in advance of the matter in which he is to participate and the nature of any financial interest described in paragraph (1)(C), and where the agency employee determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the laboratory employee's service in that matter.

(3) Not later than 180 days after the date of enactment of this Act, each agency which has contracted with a non-Federal entity to operate a Government-owned laboratory shall submit a report to the Congress which includes a copy of each contract provision amended pursuant to this subsection.

(4) No Government-owned, contractor-operated laboratory may enter into a cooperative research and development agreement under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 unless--

(A) that laboratory's operating contract contains the provisions described in paragraph (1)(A) through (F); or

(B) such laboratory agrees in a separate writing to be bound by the provisions described in paragraph (1)(A) through (F).

(5) Any contract for a Government-owned, contractor-operated laboratory entered into after the expiration of 150 days after the date of enactment of this Act shall contain the provisions described in paragraph (1)(A) through (F).

(e) TECHNOLOGY TRANSFER FUNDING AND REPORT.--Section 11(b) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(b)) is amended--

(1) by striking ``after September 30, 1981,'';

(2) by striking ``not less than 0.5 percent of the agency's research and development budget'' and inserting in lieu thereof ``sufficient funding, either as a

separate line item or from the agency's research and development budget,'';

(3) by striking ``The agency head may waive'' and all that follows through ``waives such requirement, the'' and inserting in lieu thereof ``The''; and

(4) by striking ``reasons for the waiver and alternate plans for conducting the technology transfer function at the agency.'' and inserting in lieu thereof ``agency's technology transfer program for the preceding year and the agency's plans for conducting its technology transfer function for the upcoming year, including plans for securing intellectual property rights in laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry.''.

PART D--ENVIRONMENT, SAFETY, AND MANAGEMENT

SEC. 3141. [S3154] DEFENSE WASTE CLEANUP TECHNOLOGY PROGRAM

(a) ESTABLISHMENT OF PROGRAM.--The Secretary of Energy shall establish and carry out a program of research for the development of technologies useful for (1) the reduction of environmental hazards and contamination resulting from defense waste, and (2) environmental restoration of inactive defense waste disposal sites.

(b) COORDINATION OF RESEARCH ACTIVITIES.--(1) In order to ensure nonduplication of research activities by the

THIS COPY OF 15 USC 3710A (SECTION 12 OF THE STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980) IS FROM THE U.S. CODE FOUND ON THE HOUSE INFORMATION SYSTEMS. INSERTIONS THAT WOULD BE MADE BY THIS LEGISLATION ARE IN BOLD AND ALL CAPS. DELETIONS THAT WOULD BE MADE BY THIS LEGISLATION ARE MARKED BY BRACKETS IN BOLD.

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EXPCITE TITLE 15
CHAPTER 63
HEAD Sec. 3710a. Cooperative research and development agreements
STAT (a) General authority

Each Federal agency may permit the director of any of its Government-operated Federal laboratories, AND, TO THE EXTENT PROVIDED IN AN AGENCY-APPROVED JOINT WORK STATEMENT, THE DIRECTOR OF ANY OF ITS GOVERNMENT-OPERATED FEDERAL LABORATORIES -

(1) to enter into cooperative research and development agreements on behalf of such agency (subject to subsection (c) of this section) with other Federal agencies; units of State or local government; industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions owned by the Federal agency); and

(2) to negotiate licensing agreements under section 207 of title 35, or under other authorities [for Government-owned] (IN THE CASE OF A GOVERNMENT-OWNED, CONTRACTOR-OPERATED LABORATORY, SUBJECT TO SUBSECTION (c) OF THIS SECTION) FOR inventions made or other intellectual property developed at the laboratory and other inventions or other intellectual property [of Federal employees] that may be voluntarily assigned to the Government.

(b) Enumerated authority

Under agreements entered into pursuant to subsection (a)(1) of this section, a Government-operated Federal laboratory, AND, TO THE EXTENT PROVIDED IN AN AGENCY-APPROVED JOINT WORK STATEMENT, A GOVERNMENT-OWNED, CONTRACTOR-OPERATED LABORATORY, may (subject to subsection (c) of this section) -

(1) accept, retain, and use funds, personnel, services, and property from collaborating parties and provide personnel, services, and property to collaborating parties;

(2) grant or agree to grant in advance, to a collaborating party, patent licenses or assignments, or options thereto, in any invention made in whole or in part by [a Federal] AN employee under the agreement, retaining a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government and such other rights as the Federal laboratory

deems appropriate;

(3) waive, subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government, in advance, in whole or in part, any right of ownership which the Federal Government may have to any subject invention made under the agreement by a collaborating party or employee of a collaborating party;

(4) determine rights in other intellectual property developed under an agreement entered into under subsection (a)(1) of this section; and

(5) to the extent consistent with any applicable agency requirements and standards of conduct, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States.

A GOVERNMENT-OWNED, CONTRACTOR-OPERATED LABORATORY THAT ENTERS INTO A COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT UNDER SUBSECTION (a)(1) MAY ONLY USE OR OBLIGATE ROYALTIES OR OTHER INCOME ACCRUING TO SUCH LABORATORY UNDER SUCH AGREEMENT WITH RESPECT TO ANY INVENTION FOR PAYMENTS TO INVENTORS AND FOR THE PURPOSES DESCRIBED IN SECTION 14(a)(1)(B)(i), (ii), AND (iv), ANY SUCH FUNDS NOT SO USED OR OBLIGATED BY THE END OF THE FISCAL YEAR SUCCEEDING THE FISCAL YEAR IN WHICH THEY ARE RECEIVED SHALL BE PAID INTO THE TREASURY OF THE UNITED STATES.

(c) Contract considerations

(1) A Federal agency may issue regulations on suitable procedures for implementing the provisions of this section; however, implementation of this section shall not be delayed until issuance of such regulations.

(2) The agency in permitting a Federal laboratory to enter into agreements under this section shall be guided by the purposes of this chapter.

(3)(A) Any agency using the authority given it under subsection (a) of this section shall review [employee standards of conduct] STANDARDS OF CONDUCT FOR ITS EMPLOYEES for resolving potential conflicts of interest to make sure they adequately establish guidelines for situations likely to arise through the use of this authority, including but not limited to cases where present or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate cooperative research and development agreements with Federal agencies (including the agency with which the employee involved is or was formerly employed).

(B) If, in implementing subparagraph (A), an agency is unable to resolve potential conflicts of interest within its current statutory framework, it shall propose necessary statutory changes to be forwarded to its authorizing committees in Congress.

(4) The laboratory director in deciding what cooperative research and development agreements to enter into shall -

(A) give special consideration to small business firms, and consortia involving small business firms; and

(B) give preference to business units located in the United States which agree that products embodying inventions made under the cooperative research and development agreement or produced through the use of such inventions will be manufactured substantially in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

(5)(A) If the head of the agency or his designee desires an opportunity to disapprove or require the modification of any such agreement PRESENTED BY THE DIRECTOR OF A GOVERNMENT-OPERATED LABORATORY, the agreement shall provide a 30-day period within which such action must be taken beginning on the date the agreement is presented to him or her by the head of the laboratory concerned.

(B) In any case in which the head of an agency or his designee disapproves or requires the modification of an agreement presented BY THE DIRECTOR OF A GOVERNMENT-OPERATED LABORATORY under this section, the head of the agency or such designee shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

(C)(i) ANY AGENCY WHICH HAS CONTRACTED WITH A NON-FEDERAL ENTITY TO OPERATE A LABORATORY SHALL APPROVE, REQUEST SPECIFIC MODIFICATIONS TO, OR DISAPPROVE A JOINT WORK STATEMENT THAT IS SUBMITTED BY THE DIRECTOR OF SUCH LABORATORY WITHIN 90 DAYS AFTER SUCH SUBMISSION. IN ANY CASE WHERE AN AGENCY HAS REQUESTED SPECIFIC MODIFICATIONS TO A JOINT WORK STATEMENT, THE AGENCY SHALL APPROVE OR DISAPPROVE ANY RESUBMISSION OF SUCH JOINT WORK STATEMENT WITHIN 30 DAYS AFTER SUCH RESUBMISSION, OR 90 DAYS AFTER THE ORIGINAL SUBMISSION, WHICHEVER OCCURS LATER. NO AGREEMENT MAY BE ENTERED INTO BY A GOVERNMENT-OWNED, CONTRACTOR-OPERATED LABORATORY UNDER THIS SECTION BEFORE BOTH APPROVAL UNDER CLAUSE (iv) AND APPROVAL UNDER THIS CLAUSE OF A JOINT WORK STATEMENT DESCRIBING THE PURPOSE AND SCOPE OF SUCH AGREEMENT.

(ii) IN ANY CASE IN WHICH AN AGENCY WHICH HAS CONTRACTED WITH A NON-FEDERAL ENTITY TO OPERATE A LABORATORY DISAPPROVES OR REQUIRES THE MODIFICATION OF A JOINT WORK STATEMENT SUBMITTED UNDER THIS SECTION, THE AGENCY SHALL PROMPTLY TRANSMIT A WRITTEN EXPLANATION OF SUCH DISAPPROVAL OR MODIFICATION TO THE DIRECTOR OF THE LABORATORY CONCERNED.

(iii) ANY AGENCY WHICH HAS CONTRACTED WITH A

NON-FEDERAL ENTITY TO OPERATE A LABORATORY OR LABORATORIES SHALL DEVELOP AND PROVIDE TO SUCH LABORATORY OR LABORATORIES ONE OR MORE MODEL COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS, FOR THE PURPOSES OF STANDARDIZING PRACTICES AND PROCEDURES, RESOLVING COMMON LEGAL ISSUES, AND ENABLING REVIEW OF COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS TO BE CARRIED OUT IN A ROUTINE MANNER.

(iv) AN AGENCY WHICH HAS CONTRACTED WITH A NON-FEDERAL ENTITY TO OPERATE A LABORATORY SHALL REVIEW EACH AGREEMENT IMPLEMENTING A JOINT WORK STATEMENT UNDER THIS SECTION. WITHIN 30 DAYS AFTER THE PRESENTATION, BY THE DIRECTOR OF THE LABORATORY, OF SUCH AGREEMENT, THE AGENCY SHALL, ON THE BASIS OF SUCH REVIEW, APPROVE OR REQUEST SPECIFIC MODIFICATION OF SUCH AGREEMENT. SUCH AGREEMENT SHALL NOT TAKE EFFECT BEFORE APPROVAL UNDER THIS CLAUSE.

(v) IF AN AGENCY FAILS TO COMPLETE A REVIEW UNDER CLAUSE (iv) WITHIN THE 30-DAY PERIOD SPECIFIED THEREIN, THE AGENCY SHALL SUBMIT TO THE CONGRESS, WITHIN 10 DAYS AFTER THE END OF THAT 30-DAY PERIOD, A REPORT ON THE REASONS FOR SUCH FAILURE. THE AGENCY SHALL, AT THE END OF EACH SUCCESSIVE 30-DAY PERIOD THEREAFTER DURING WHICH SUCH FAILURE CONTINUES, SUBMIT TO THE CONGRESS ANOTHER REPORT ON THE REASONS FOR THE CONTINUING FAILURE. NOTHING IN THIS CLAUSE RELIEVES THE AGENCY OF THE REQUIREMENT TO COMPLETE A REVIEW UNDER CLAUSE (iv).

(vi) IN ANY CASE IN WHICH AN AGENCY WHICH HAS CONTRACTED WITH A NON-FEDERAL ENTITY TO OPERATE A LABORATORY REQUESTS THE MODIFICATION OF AN AGREEMENT PRESENTED UNDER THIS SECTION, THE AGENCY SHALL PROMPTLY TRANSMIT A WRITTEN EXPLANATION OF SUCH MODIFICATION TO THE DIRECTOR OF THE LABORATORY CONCERNED.

(6) Each agency shall maintain a record of all agreements entered into under this section.

(7)(A) NO TRADE SECRETS OR COMMERCIAL OR FINANCIAL INFORMATION THAT IS PRIVILEGED OR CONFIDENTIAL, UNDER THE MEANING OF SECTION 552(b)(4) OF TITLE 5, UNITED STATES CODE, WHICH IS OBTAINED FROM A NON-FEDERAL PARTY PARTICIPATING IN A COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT SHALL BE DISCLOSED IN THE CONDUCT OF RESEARCH OR AS A RESULT OF ACTIVITIES UNDER THIS ACT.

(B) THE DIRECTOR, OR IN THE CASE OF A CONTRACTOR-OPERATED LABORATORY, THE AGENCY, FOR A PERIOD OF UP TO 5 YEARS AFTER DEVELOPMENT OF INFORMATION THAT RESULTS FROM RESEARCH AND DEVELOPMENT ACTIVITIES CONDUCTED UNDER THIS ACT AND WOULD BE A TRADE SECRET OR COMMERCIAL OR

FINANCIAL INFORMATION THAT IS PRIVILEGED OR CONFIDENTIAL IF THE INFORMATION HAD BEEN OBTAINED FROM A NON-FEDERAL PARTY PARTICIPATING IN A COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT, MAY PROVIDE APPROPRIATE PROTECTIONS AGAINST THE DISSEMINATION OF SUCH INFORMATION, INCLUDING EXEMPTION FROM SUBCHAPTER II OF CHAPTER 5 OF TITLE 5, UNITED STATES CODE.

(d) Definitions

As used in this section -

(1) the term 'cooperative research and development agreement' means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory; except that such term does not include a procurement contract or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31; [and]

(2)(A) the term 'laboratory' means a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government;

(B) A GROUP OF GOVERNMENT-OWNED, CONTRACTOR-OPERATED FACILITIES UNDER A COMMON CONTRACT, A SUBSTANTIAL PURPOSE OF WHICH IS THE PERFORMANCE OF RESEARCH AND DEVELOPMENT FOR THE FEDERAL GOVERNMENT; AND

(C) IN THE CASE OF A FACILITY THAT IS NOT UNDER A COMMON CONTRACT DESCRIBED IN SUBPARAGRAPH (B), A GOVERNMENT-OWNED, CONTRACTOR-OPERATED FACILITY, THE PRIMARY PURPOSE OF WHICH IS THE PERFORMANCE OF RESEARCH AND DEVELOPMENT FOR THE FEDERAL GOVERNMENT,

BUT SUCH TERM DOES NOT INCLUDE ANY FACILITY COVERED BY EXECUTIVE ORDER NO. 12344, DATED FEBRUARY 1, 1982, PERTAINING TO THE NAVAL NUCLEAR PROPULSION PROGRAM; AND

(3) THE TERM 'JOINT WORK STATEMENT' MEANS A PROPOSAL PREPARED FOR A FEDERAL AGENCY BY THE DIRECTOR OF A GOVERNMENT-OWNED, CONTRACTOR-OPERATED LABORATORY DESCRIBING THE PURPOSE AND SCOPE OF A PROPOSED COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT, AND ASSIGNING RIGHTS AND RESPONSIBILITIES AMONG THE AGENCY, THE LABORATORY, AND ANY OTHER PARTY OR PARTIES TO THE PROPOSED AGREEMENT.

(e) Determination of laboratory missions

For purposes of this section, an agency shall make separate determinations of the mission or missions of each of its

laboratories.

(f) Relationship to other laws

Nothing in this section is intended to limit or diminish existing authorities of any agency.

(g) PRINCIPLES—IN IMPLEMENTING THIS SECTION, EACH AGENCY WHICH HAS CONTRACTED WITH A NON-FEDERAL ENTITY TO OPERATE A LABORATORY SHALL BE GUIDED BY THE FOLLOWING PRINCIPLES:

(1) THE IMPLEMENTATION SHALL ADVANCE PROGRAM MISSIONS AT THE LABORATORY, INCLUDING ANY NATIONAL SECURITY MISSION.

(2) CLASSIFIED INFORMATION AND UNCLASSIFIED SENSITIVE INFORMATION PROTECTED BY LAW, REGULATION, OR EXECUTIVE ORDER SHALL BE APPROPRIATELY SAFEGUARDED.

SOURCE (Pub. L. 96-480, Sec. 12, as added and renumbered Sec. 11, Pub. L. 99-502, Sec. 2, 9(e)(1), Oct. 20, 1986, 100 Stat. 1785, 1797; renumbered Sec. 12, Pub. L. 100-418, title V, Sec. 5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; amended Pub. L. 100-519, title III, Sec. 301, Oct. 24, 1988, 102 Stat. 2597.)

MISC1 AMENDMENTS

1988 - Subsec. (a)(2). Pub. L. 100-519, Sec. 301(1), substituted 'or other intellectual property developed at the laboratory and other inventions or other intellectual property' for 'at the laboratory and other inventions'.

Subsec. (b)(4), (5). Pub. L. 100-519, Sec. 301(2), added par. (4) and redesignated former par. (4) as (5).

SECREF SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 278n, 3710c, 3714 of this title; title 33 section 2313.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

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EXPCITE TITLE 15
CHAPTER 63
HEAD Sec. 3710. Utilization of Federal technology
STAT (a) Policy

(1) It is the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in research and development. To this end the Federal Government shall strive where appropriate to transfer federally owned or originated technology to State and local governments and to the private sector.

(2) Technology transfer, consistent with mission responsibilities, is a responsibility of each laboratory science and engineering professional.

(3) Each laboratory director shall ensure that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in the laboratory.

(b) Establishment of Research and Technology Applications Offices

Each Federal laboratory shall establish an Office of Research and technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each Federal laboratory and the Federal agency operating or directing the laboratory, except that (1) each laboratory having 200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions as staff for its Office of Research and Technology Applications, and (2) [after September 30, 1981,] each Federal agency which operates or directs one or more Federal laboratories shall make available [not less than 0.5 percent of the agency's research and development budget] SUFFICIENT FUNDING, EITHER AS A SEPARATE LINE ITEM OR FROM THE AGENCY'S RESEARCH AND DEVELOPMENT BUDGET,

to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications. Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development program so as to ensure

that highly competent technical managers are full participants in the technology transfer process. [The agency head may waive the requirement set forth in clause (2) of the preceding sentence. If the agency head waives such requirement, the] THE agency head shall submit to Congress at the time the President submits the budget to Congress an explanation of the [reasons for the waiver and alternate plans for conducting the technology transfer function at the agency.] AGENCY'S TECHNOLOGY TRANSFER PROGRAM FOR THE PRECEDING YEAR AND THE AGENCY'S PLANS FOR CONDUCTING ITS TECHNOLOGY TRANSFER FUNCTION FOR THE UPCOMING YEAR, INCLUDING PLANS FOR SECURING INTELLECTUAL PROPERTY RIGHTS IN LABORATORY INNOVATIONS WITH COMMERCIAL PROMISE AND PLANS FOR MANAGING SUCH INNOVATIONS SO AS TO BENEFIT THE COMPETITIVENESS OF UNITED STATES INDUSTRY.

THIS COPY OF 15 USC 3710c (SECTION 14 OF THE STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980) IS FROM THE U.S. CODE FOUND ON THE HOUSE INFORMATION SYSTEMS. INSERTIONS THAT WOULD BE MADE BY THIS LEGISLATION ARE IN BOLD AND ALL CAPS. DELETIONS THAT WOULD BE MADE ARE MARKED BY BRACKETS AND IN BOLD.

CITE 15 USC Sec. 3710c 01/03/89
EXPCITE TITLE 15

CHAPTER 63
HEAD Sec. 3710c. Distribution of royalties received by Federal agencies
STAT (a) In general

(1) Except as provided in paragraphs (2) and (4), any royalties or other income received by a Federal agency from the licensing or assignment of inventions under agreements entered into under section 3710a (FOOTNOTE 8) [Change Section 11 to Section 12] of this title, and inventions of Government-operated Federal laboratories licensed under section 207 of title 35, or under any other provision of law, shall be retained by the agency whose laboratory produced the invention and shall be disposed of as follows:

(FOOTNOTE 8) See References in Text note below.

(A)(i) The head of the agency or his designee shall pay at least 15 percent of the royalties or other income the agency receives on account of any invention to the inventor (or co-inventors) if the inventor (or each such co-inventor) has assigned his or her rights in the invention to the United States. This clause shall take effect on October 20, 1986, unless the agency publishes a notice in the Federal Register within 90 days of October 20, 1986, indicating its election to file a Notice of Proposed Rulemaking pursuant to clause (ii).

(ii) An agency may promulgate, in accordance with section 553 of title 5, regulations providing for an alternative program for sharing royalties with inventors under clause (i). Such regulations must -

(I) guarantee a fixed minimum payment to each such inventor, each year that the agency receives royalties from that inventor's invention;

(II) provide a percentage royalty share to each such inventor, each year that the agency receives royalties from that inventor's invention in excess of a threshold amount;

(III) provide that total payments to all such inventors shall exceed 15 percent of total agency royalties in any given fiscal year; and

(IV) provide appropriate incentives from royalties for those laboratory employees who contribute substantially to the technical development of a licensed invention between the time of the filing of the patent application and the licensing of the invention.

(iii) An agency that has published its intention to promulgate regulations under clause (ii) may elect not to pay inventors under clause (i) until the expiration of two years after October 20, 1986, or until the date of the promulgation of such regulations,

whichever is earlier. If an agency makes such an election and after two years the regulations have not been promulgated, the agency shall make payments (in accordance with clause (i)) of at least 15 percent of the royalties involved, retroactive to October 20, 1986. If promulgation of the regulations occurs within two years after October 20, 1986, payments shall be made in accordance with such regulations, retroactive to October 20, 1986. The agency shall retain its royalties until the inventor's portion is paid under either clause (i) or (ii). Such royalties shall not be transferred to the agency's Government-operated laboratories under subparagraph (B) and shall not revert to the Treasury pursuant to paragraph (2) as a result of any delay caused by rulemaking under this subparagraph.

(B) The balance of the royalties or other income shall be transferred by the agency to its Government-operated laboratories, with the majority share of the royalties or other income from any invention going to the laboratory where the invention occurred; and the funds so transferred to any such laboratory may be used or obligated by that laboratory during the fiscal year in which they are received or during the succeeding fiscal year -

(i) for payment of expenses incidental to the administration and licensing of inventions by that laboratory or by the agency with respect to inventions which occurred at that laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for invention management and licensing services;

(ii) to reward scientific, engineering, and technical employees of that laboratory **INCLUDING PAYMENTS TO INVENTORS AND DEVELOPERS OF SENSITIVE OR CLASSIFIED TECHNOLOGY, REGARDLESS OF WHETHER THE TECHNOLOGY HAS COMMERCIAL APPLICATIONS;**

(iii) to further scientific exchange among the Government-operated laboratories of the agency; or

(iv) for education and training of employees consistent with the research and development mission and objectives of the agency, and for other activities that increase the licensing potential for transfer of the technology of the [Government-operated] laboratories of the agency.

Any of such funds not so used or obligated by the end of the fiscal year succeeding the fiscal year in which they are received shall be paid into the Treasury of the United States.

(2) If, after payments to inventors under paragraph (1), the royalties received by an agency in any fiscal year exceed 5 percent of the budget of the Government-operated laboratories of the agency for that year, 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent may be used or obligated for the purposes described in clauses (i) through (iv) of paragraph (1)(B) during that fiscal year or the succeeding fiscal year. Any funds not so used or obligated shall be paid into the Treasury of the United States.

(3) Any payment made to an employee under this section shall be in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which he

is otherwise entitled or for which he is otherwise eligible or limit the amount thereof. Any payment made to an inventor as such shall continue after the inventor leaves the laboratory or agency. Payments made under this section shall not exceed $100,000 per year to any one person, unless the President approves a larger award (with the excess over $100,000 being treated as a Presidential award under section 4504 of title 5).

(4) A Federal agency receiving royalties or other income as a result of invention management services performed for another Federal agency or laboratory under section 207 of title 35, may retain such royalties or income to the extent required to offset the payment of royalties to inventors under clause (i) of paragraph (1)(A), costs and expenses incurred under clause (i) of paragraph (1)(B), and the cost of foreign patenting and maintenance for any invention of the other agency. All royalties and other income remaining after payment of the royalties, costs, and expenses described in the preceding sentence shall be transferred to the agency for which the services were performed, for distribution in accordance with clauses (i) through (iv) of paragraph (1)(B).

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SOURCE (Pub. L. 96-480, Sec. 14, as added, renumbered Sec. 13, and amended Pub. L. 99-502, Sec. 7, 9(e)(1), (3), Oct. 20, 1986, 100 Stat. 1792, 1797; renumbered Sec. 14 and amended Pub. L. 100-418, title V, Sec. 5122(a)(1), 5162(a), Aug. 23, 1988, 102 Stat. 1438, 1450; Pub. L. 100-519, title III, Sec. 303(a), Oct. 24, 1988, 102 Stat. 2597.)

REFTEXT REFERENCES IN TEXT

Section 3710a of this title, referred to in subsec. (a)(1), was in the original a reference to section 11 of this Act, meaning section 11 of the Stevenson-Wydler Technology Innovation Act of 1980. Section 11 of the Act was renumbered section 12 by section 5122(a)(1) of Pub. L. 100-418 without corresponding amendment to this section.